IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 344 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

PRAHALDJI SALUJI THAKORE

Versus

STATE OF GUJARAT THRO' SECRETARY

Appearance:

1. Special Civil Application No. 344 of 2002
MS BANNA S DUTTA for Petitioner No. 1
MRS HB PUANI AGP for Respondent No. 1 to 3
MS PJ DAVAWALA, Addl. Central Govt.
Counsel for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/04/2002

ORAL JUDGEMENT

1. By means of filing present petition petitioner has prayed for quashing and setting aside the impugned detention order dated 16-12-2001 passed by the respondent no. 1 District Magistrate, Banaskantha at Palanpur in

exercise of his power conferred under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. When the matter came up for hearing before this Court, rule was issued and pursuant to that Mrs. Hansaben Punani, learned A.G.P. has appeared on behalf of the respondents No. 1 to 3 by producing affidavit-in-reply affirmed by M.K. Das, I.A.S., District Magistrate and Collector, Banaskantha on behalf of the respondent no. 2. While for the respondent no. 4, Mrs. P.J. Davawala, learned Addl. Central Govt. Standing Counsel, has appeared by submitting the counter-affidavit filed by the Under Secretary, Department of Consumer Affairs, Food and Public Distribution, New Delhi. Both these affidavits are ordered to be taken on record.

3. While arguing the matter, learned counsel for the petitioner has restricted her arguments only on the ground of delay in deciding the representation of the petitioner. According to her, the petitioner has made a representation on 24-12-2001 through his advocate to the District Magistrate, Banaskantha at Palanpur and the same was rejected on 26-12-2001. She has further argued that the detention order was passed on 16-12-2001 and 12 days will be over on 28-12-2001. The representation of the petitioner has been rejected by the District Magistrate on 27-12-2001 which is admittedly after approval of the detention order by the authority concerned. In support of her arguments, she has relied on the decision of this Court reported in 1994 (2) G.L.H. (U.J.) 11 Pg. 23, wherein it is held as under :

> "The detaining authority has no power to revoke order of detention after it is confirmed by the State Government even though the representation is addressed to it".

4. Considering the arguments of the learned counsel for the parties and material on record it is clearly established that there is delay in deciding the representation of the petitioner. The petitioner has made a representation on 24-12-2001 through his advocate to the District Magistrate, Banaskantha at Palanpur which was rejected on 26-12-2001. It appears that the detention order was passed on 16-12-2001 and 12 days will be over on 28-12-2001. It also appears the representation of the petitioner has been forwarded to the District Magistrate on 27-12-2001 and therefore

admittedly after the approval of the detention order by the authority concerned, he is entitled to send the representation to the authority concerned. Thus, there is delay in forwarding and deciding the representation of the petitioner. Under these circumstances, the impugned order of detention is illegal and bad in law and the same requires to be quashed and set aside.

5. In the result, the present petition is allowed. The impugned detention order dated 16-12-2001 passed against the present petitioner - detenu by the District Magistrate, Banaskantha at Palanpur is quashed and set aside. The petitioner - detenu Prahladji Saluji Thakore, is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute, with no order as to costs. Direct Service is permitted.

(R. P. Dholakia, J.)

-0-0-0-0-0-

/JVSatwara/